

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

DWAYNE DELESTON,)	C/A No.: 2:06-0520-DCN
)	CR No.: 2:99-0751-DCN
Petitioner,)	
v.)	
)	ORDER
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

Presently before the court is petitioner Dwayne Deleston's motion pursuant to 28 U.S.C. § 2255. Deleston's motion is clearly attacking his conviction pursuant to 28 U.S.C. § 2255. The government responded to petitioner's motion by outlining Deleston's repeated attempts to overturn his conviction and sentence and asserts that the present motion is successive.

There is no indication in the record that Deleston has sought leave from the United States Court of Appeals for the Fourth Circuit to file another § 2255. Leave from the United States Court of Appeals is required under the Anti-Terrorism and Effective Death Penalty Act of 1996 for filers of successive § 2255 petitions. In the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims. *See Evans v. Smith*, 220 F.3d 306, 325 (4th Cir. 2000).

Before Deleston attempts to file another petition in the United States District Court for the District of South Carolina, he *must* seek and obtain leave (*i.e.*, written permission) from the United States Court of Appeals for the Fourth Circuit. Those forms can be obtained from the Clerk's Office of the United States Court of Appeals for the Fourth Circuit, 1100 East Main Street, Suite 501, Richmond, Virginia 23219-3517.

Accordingly, the motion is **dismissed** without prejudice as successive under Rule 9(b) of the Section 2255 Rules and under 28 U.S.C. § 2244(a). This dismissal is without prejudice to the defendant's right to seek leave from the United States Court of Appeals for the Fourth Circuit to file a successive § 2255 petition. *See* 28 U.S.C. § 2255 (final paragraph).

IT IS SO ORDERED.



May 18, 2006
Charleston, South Carolina